

“Defendants”) to comply with their obligations under FOIA to release agency records relating to his immigration matters that Plaintiff requested and that Defendants have improperly withheld from him.

PARTIES

2. Plaintiff Alejandro Larios Chavez is a citizen of Mexico who resides in Jalisco, Mexico.

3. Defendant U.S. Customs and Border Protection is an executive agency under the Department of Homeland Security bearing responsibility for (i) inspection and review of passports and visas at U.S. ports of entry; (ii) prevention and apprehension of authorized entrants; and (iii) the maintenance of records relating to, *inter alia*, the admissibility of persons into the U.S.

4. Defendant U.S. State Department is an executive department bearing responsibility for (i) the administration and enforcement of U.S. immigration laws, (ii) the processing of certain visa requests, including those made by Plaintiff, and (iii) the maintenance of records relating to, *inter alia*, such visa requests.

5. Defendant CBP and Defendant State Department are “agencies” for purposes of 5 U.S.C. § 552(f)(1) and have possession, custody, and/or control of records that Plaintiff seeks.

JURISDICTION AND VENUE

6. The Court has both subject matter jurisdiction and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). Subject matter jurisdiction further lies under 28 U.S.C. § 1331 because this Matter presents a question of federal law.

7. Venue properly lies in this judicial district under 5 U.S.C. § 552(a)(4)(B) because of the nature of this Matter and under 28 U.S.C. § 1391(e) because Defendants are agencies of the federal Executive Branch.

PLAINTIFF'S FOIA REQUESTS AND DEFENDANTS' FAILURES TO RESPOND

8. On May 30, 2019, Plaintiff, through Counsel, filed a FOIA request with CBP seeking information relating to him in CBP's possession, custody, or control. The agency number relating to that request is CBP-2019-056423.

9. That same day, Plaintiff, through counsel, filed a separate FOIA request with the State Department also seeking documents relating to him in the State Department's possession, custody, or control. The agency number relating to that request is F-2019-06618.

10. To date, neither Defendant State Department nor Defendant CBP has provided the records requested by Plaintiff in his FOIA requests, notwithstanding FOIA's requirement that an agency to respond within 20 working days. *See* 5 U.S.C. § 552(a)(6)(A)(i).

DEFENDANT CBP'S FAILURE TO COMPLY WITH FOIA

11. On May 30, 2019, Plaintiff submitted a FOIA request electronically. CBP has assigned tracking number CBP-2019-056423 to Plaintiff's request.

12. On July 10, 2019—27 working days after Plaintiff submitted the request, and 7 working days after the statutory response deadline—Defendant CBP notified Plaintiff by letter that CBP “may encounter some delay” in processing Plaintiff's request. In the letter, Defendant CBP stated that DHS's FOIA regulations permit a 10-day extension to the statutory response deadline in “certain circumstances,” citing 6 C.F.R. § 5.5(c). Defendant CBP stated further that CBP's FOIA Division takes, on average, a minimum of 3 to 6 months to process a FOIA request related to “travel/border incidents.” In the letter, CBP did not include an estimated time frame during which Plaintiff could expect to receive a determination in response to his request.

13. While FOIA permits an agency to toll the statutory response period by 10 working days, an agency may not exceed the 10-day extension in the absence of certain enumerated “unusual circumstances.” *See* 5 U.S.C. §§ 552(a)(6)(B)(i); (iii)(I)-(III).

14. As stated by the DHS FOIA regulation Defendant CBP itself cites, “[w]henver the statutory time limits for processing a request cannot be met because of ‘unusual circumstances,’ as defined in the FOIA, and the [agency] extends the time limits on that basis, the [agency] shall, before expiration of the twenty-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed.” 6 C.F.R. § 5.5(c).

15. Moreover, “[w]here the extension exceeds ten working days, the [agency] shall, as described by the FOIA, provide the requester with an opportunity to modify the request or agree to an alternative time period for processing. The [agency] shall make available its designated FOIA Officer and its FOIA Public Liaison for this purpose. The [agency] shall also alert requesters to the availability of the Office of Government Information Services (OGIS) to provide dispute resolution services.” 6 C.F.R. § 5.5(c).

16. In its July 10 letter to Plaintiff—which Defendant CBP wrote and sent 7 days after the 20-day response period—CBP did not claim that it had encountered any unusual circumstances with respect to processing Plaintiff’s request. Defendant CBP did not provide Plaintiff with an opportunity to modify the request or agree to an alternative time period for processing. Defendant CBP also did not make available to Plaintiff its designated FOIA Officer or FOIA Public Liaison, nor alert Plaintiff to the availability of the OGIS to provide dispute resolution services.

17. Over 40 working days have passed since Plaintiff filed his FOIA request, well exceeding the original 20-day response deadline, the 10-day tolling period, and the aggregate 30-day deadline. Defendant CBP has nevertheless not responded with a determination regarding Plaintiff's FOIA request.

18. Defendant CBP has wrongfully withheld the requested records from Plaintiff in violation of law.

DEFENDANT STATE DEPARTMENT'S FAILURE TO COMPLY WITH FOIA

19. On May 31, 2019, Defendant State Department confirmed submission of Plaintiff's FOIA request via form letter and provided tracking number F-2019-06618.

20. To date, Defendant State Department has not provided the records requested by Plaintiff in his FOIA request, notwithstanding the FOIA's requirement of an agency to respond to a request within 20 working days. *See* 5 U.S.C. § 552(a)(6)(A)(i).

21. Defendant State Department has not contacted Plaintiff to inform him of any delay in processing his request or of any unusual circumstances that the State Department may have encountered in processing his request.

22. Over 40 working days have passed since Defendant State Department received Plaintiff's FOIA request, well exceeding the original 20-day response deadline. Defendant State Department has nevertheless not responded with a determination regarding Plaintiff's FOIA request.

23. Defendant State Department has wrongfully withheld the requested records from Plaintiff.

CLAIMS FOR RELIEF

**FIRST CAUSE OF ACTION – VIOLATION OF FOIA FOR FAILURE TO COMPLY
WITH STATUTORY DEADLINES**

24. The allegations contained in the preceding paragraphs are repeated and incorporated as though fully set forth herein.

25. Defendant CBP and Defendant State Department are agencies subject to FOIA. *See* 5 U.S.C. §§ 551(1), 552(f)(1).

26. Plaintiff has sought records that are within the possession, custody, and/or control of Defendants for purposes of FOIA.

27. Defendants failed to make a timely determination regarding Plaintiff's initial request within the statutory timeframe. *See* 5 U.S.C. § 552(a)(6)(A).

28. Plaintiff is deemed to have exhausted applicable administrative remedies with respect to his request under the terms of the FOIA statute. *See* 5 U.S.C. § 552(a)(6)(C)(i).

**SECOND CAUSE OF ACTION – IMPROPER WITHHOLDING OF AGENCY
RECORDS UNDER FOIA**

29. The allegations contained in the above-entitled paragraphs are repeated and incorporated as though fully set forth herein.

30. Defendant CBP and Defendant State Department are agencies subject to FOIA. *See* 5 U.S.C. §§ 551(1), 552(f)(1).

31. Plaintiff has sought records that are within the possession, custody, and/or control of Defendants for purposes of FOIA.

32. Defendants failed to provide proper access to or copies of records responsive to Plaintiff's requests in violation of FOIA. *See* 5 U.S.C. § 552(a)(3).

33. Plaintiff is deemed to have exhausted applicable administrative remedies with respect to his requests under the terms of the FOIA statute. *See* 5 U.S.C. § 552(a)(6)(C)(i).

PRAYER FOR RELIEF

Plaintiffs hereby pray for relief as follows:

1. That the Court order Defendant CBP and Defendant State Department to disclose all records or portions thereof to which Plaintiff is entitled under FOIA;
2. That the Court issue a declaration stating that Plaintiff is entitled to disclosure of the requested records;
3. That the Court award Plaintiff's reasonable attorneys' fees and costs incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
4. That the Court provide further relief as it deems appropriate, just, and equitable.

DATED August 2, 2019

Respectfully submitted,

/s/ Daniel P. Pierce

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